

# NO. 05-0420

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IN RE CLAYTON HOMES, INC., ET AL

BEFORE THE MULTIDISTRICT LITIGATION PANEL  
OF THE SUPREME COURT OF TEXAS  
AUSTIN, TEXAS

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**AGREED MOTION  
FOR EXTENSION OF TIME TO FILE  
RESPONSE TO MOTION FOR COORDINATED  
PRETRIAL PROCEEDINGS AND ASSIGNMENT  
OF SINGLE PRETRIAL JUDGE**

Thomas F. Nye  
State Bar No. 15154025  
Linda C. Breck  
State Bar No. 02938600  
Brin & Brin, P.C.  
1202 Third Street  
Corpus Christi, TX 78404  
361-881-9643  
361-883-0506 Fax

George G. Brin  
State Bar No. 02998000  
Brin & Brin, P.C.  
10999 IH 10 West, Suite 800  
San Antonio, TX 78230  
210-341-9711  
210-341-1854 Fax

Jeffrey Wigington  
State Bar No. 00785246  
David Rumley  
State Bar No. 00791581  
Wigington & Rumley, L.L.P.  
800 N. Shoreline Boulevard  
14<sup>th</sup> Floor South Tower  
Corpus Christi, TX 78401  
361-885-7500  
361-885-0487 Fax

ATTORNEYS FOR RESPONDENTS

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TO THE HONORABLE MULTIDISTRICT LITIGATION PANEL:

Come now Respondents, Vincente Saenz, Teodulo Saenz, Manuel G. Chapa, Zulema Uribe, Jose Luis Garza, Marcelina Garza, Esterelda S. Escamilla, Jesus Saavedra, Jr., Esmeralda S. Trevino, Nora Cavazos, Idolina C. Galvan, Orlando Morin, Jose Sanchez, Anita Perez, Horacio Oliveira, Lydia Olvarez, Carlos Garcia, Emeteria N. Garcia, Minerva Martinez as Next Friend of Maria J.

Gaitan, Guillermo Clarke, III, and Edith Clarke both Individually and as Next Friend of Johnathan Clarke, a Minor, Pedro S. Sanchez, Velia S. Sanchez, Teofilo Alaniz, Elvira Alaniz, Elizandro G. Herrera, aka Leo Herrera, Oscar Ortiz and Isabel V. Ortiz, Guadalupe G. Barrera, Delma Barrera, Josefa Torres Sanchez, Rolando Ramos, Martin Gonzalez, Mary Ann Gonzalez, Marcelino Garza, Manuela Garza, Patricia Farias, Rachel Farias, Raul Farias, Alfredo Farias, III, Sylvia F. Godines, Roxanne Trevino, Richard Trevino, Rita Ramos, Evelia Farias, Guadalupe Cardona, Jr., Frank C. Benavides, Domingo Santos, Esmeralda Santos, Homero Contreras, Regino Salinas, Amelia C. Salinas, Kathy Perez, Rogelio Munoz, Jr., Martin Contreras, Leobardo Perez, Odelia Garza, Antonio M. Deleon, Blas Ruiz, Jr., Veronica R. Garza, Odelia S. Rodriguez, Jose Falcon, Debbie Lee Falcon, Jesus Falcon, Jr., Juan Luis Falcon, Olinda Rivera, Juan Manuel Cortez, Matilde T. Flores, Olivia J. Garcia, Belinda J. Garcia, Hector Garcia, Jesus Saenz and Delmy E. Garza both Individually and as Next Friends of Jesus J. Saenz, Jr., a Minor, Alma C. Soliz Valdez, Antonio Anguiano, Jose Anguiano, Rafael Anguiano, Martina Hudson, Felicita Rodriguez, Maria S. Valenzuela, Porfirio Benavides, Jr., Jose Noe Benavides, Luis Roel Benavides, Alejandro Marroquin, Maria Marroquin, Alex Cruz, Mayela Cruz, Ricardo Canales, Alicia Canales, Dagoberto Arevalo, Guadalupe Chapa, Lewis Routon, Jesus M. Garcia and Lorenza G. Garcia, hereinafter referred to as Respondents, and pursuant to Tex. R. Jud. Admin. §13.3(d) and Tex. R. App. P. 2, 10.1, and 10.5(b)

move this Court to modify the filing time for Respondents' Response to Movants' Motion for Coordinated Pretrial Proceedings and Assignment of Single Pretrial Judge, hereinafter referred to as MDL Motion to Transfer, and in support thereof would show the following:

I.

Movants, Clayton Homes, Inc., CMH Homes, Inc., Vanderbilt Mortgage and Finance, Inc., Benjamin Joseph Frazier, Bruce Robin Moore, Jr., and Kevin T. Clayton, filed a MDL Motion to Transfer with the MDL Panel pursuant to Tex. R. Jud. Admin. 11.3(a), 11.3(d), 11.7(a), 11.7(c) and 13, on May 26, 2005.

II.

Pursuant to Tex. R. Jud. Admin. 13.3(d), the deadline for filing a response to Movants' MDL Motion to Transfer is June 15, 2005. Respondents' request an extension of time to and including July 28, 2005, and in support thereof would show the MDL Panel the following:

III.

This is Respondents' first request for extension of time within which to file their response. No previous extensions have been requested. The facts relied on by Respondents to reasonably explain their need for an extension of time are, as follows:

1. The Movants and Respondents engaged in a four day mediation beginning on May 31, 2005, and concluding on June 3, 2005. At the conclusion of

the mediation, the parties agreed to stay all matters for thirty (30) days, including all discovery, motions, responses, hearings and deadlines in all court proceedings referenced in Exhibit "A" to Movants' MDL Motion to Transfer in an effort to work diligently at resolving all of the cases by settlement. The purpose of this agreement was to allow the parties to continue serious settlement negotiations for thirty (30) days in the hopes that these parties could resolve this matter.

2. The thirty day deadline the parties set for settlement discussions expires on July 8, 2005. Because the Respondents focused on the four day mediation and on trying to resolve this litigation, they have not prepared a response to Movants' MDL Motion to Transfer. Accordingly, the Movants and the Respondents have agreed that if the case is not settled the Respondents will have twenty days from July 8, 2005, or until July 28, 2005, within which to file a response to the Motion to Transfer.

3. It has long been the practice in Texas for courts to encourage parties to resolve and settle their differences. Texas Civil Practice & Remedies Code Section 154.002 provides that "it is the policy of this state to encourage the peaceable resolution of disputes...." The act establishes a definite state policy to encourage the early settlement of pending litigation through voluntary settlement procedure and places the responsibility for carrying out this procedure on both the trial and appellate courts. *Downey v. Gregory*, 757 S.W.2d 524, 525 (Tex. App. –

Houston [1<sup>st</sup> Dist.] 1988, orig. proceeding). The granting of this Agreed Motion is consistent with this longstanding practice.

IV.

For the above and foregoing reasons, Respondents request an extension of time until July 28, 2005, within which to file their response to the Movants' MDL Motion to Transfer. This motion is not sought for purposes of delay but so that justice may be done.

V.

David L. Rumley has previously communicated with Joseph L. Segrato on June 8, 2005. Mr. Segrato advised that he does not oppose the Respondents' Motion for Extension of Time to File a Response to Movants' MDL Motion to Transfer.

WHEREFORE, premises considered, Respondents pray that this Panel modify the filing time for filing a response to Movants' MDL Motion to Transfer by granting an extension of time to and including July 28, 2005. Respondents pray for such other and further relief in both law and equity that they may be justly entitled to receive.

Respectfully submitted,

BRIN & BRIN, P.C.

BY 

THOMAS F. NYE

State Bar No. 15154025

LINDA C. BRECK

State Bar No. 02938600

1202 Third Street

Corpus Christi, Texas 78404

(361) 881-9643

(361) 883-0506 Fax

GEORGE G. BRIN

State Bar No. 02998000

10999 IH 10 West, Suite 800

San Antonio, TX 78230

210-341-9711

210-341-1854 Fax

AND

WIGINGTON & RUMLEY, L.L.P.

By 

JEFFREY WIGINGTON

State Bar No. 00785246

DAVID L. RUMLEY

State Bar No. 00791581

800 N. Shoreline Boulevard

14<sup>th</sup> Floor South Tower

Corpus Christi, TX 78401

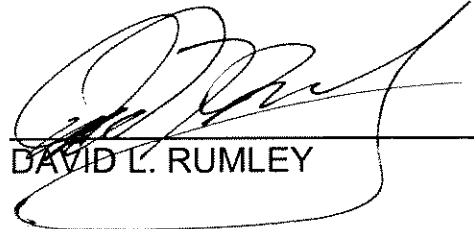
361-885-7500

361-885-0487 Fax

ATTORNEYS FOR RESPONDENTS

### **CERTIFICATE OF CONFERENCE**

I, DAVID L. RUMLEY, certify that I spoke with Joseph L. Segrato on June 8, 2005, and he advised me that he does not oppose this Motion for Extension of Time to File Response to Movants' MDL Motion to Transfer.



DAVID L. RUMLEY

### **CERTIFICATE OF SERVICE**

This is to certify that on this the 8<sup>th</sup> day of June, 2005, via Certified Mail, Return Receipt Requested, a copy was forwarded to:

Mr. Joseph L. Segrato  
Mr. Robert L. Guerra  
Mr. Vaughan E. Waters  
Thornton, Biechlin, Segrato,  
Reynolds & Guerra, L.C.  
Bank of America – Suite 1000  
500 N. Shoreline Blvd.  
Corpus Christi, TX 78471

Pursuant to Tex. R. Jud. Admin. §13.3(f) a copy of this Motion is also being sent to each member of the MDL Panel:

Hon. George C. Hanks  
1307 San Jacinto Street  
10<sup>th</sup> Floor  
Houston, TX 77002



Hon. Errlinda Castillo  
13<sup>th</sup> Court of Appeals  
10<sup>th</sup> Floor  
Nueces County Courthouse  
901 Leopard Street  
Corpus Christi, TX 78401

Hon. Bea Ann Smith  
P. O. Box 12547  
Austin, TX 78711

Hon. Douglas S. Lang  
600 Commerce, 2<sup>ND</sup> Floor  
Dallas, TX 75202

Hon. David Peebles  
100 Dolorosa Street  
San Antonio, TX 78205

  
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THOMAS F. NYE